IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

SUSAN MAGNAN	:	APPEAL NO. C-090083 TRIAL NO. A-0708671
and RONALD MAGNAN,	:	
Plaintiffs-Appellants,	:	*JUDGMENT ENTRY.*
vs.	:	
MEIJER, INC.,		
Defendant-Appellee.		

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Plaintiffs-appellants Susan and Ronald Magnan appeal the trial court's entry of summary judgment in favor of defendant-appellee Meijer, Inc, in a slip-and-fall action. We conclude that the Magnans' sole assignment of error is meritless, and, therefore, we affirm the trial court's judgment.

According to the deposition testimony of Susan Magnan ("Susan"), she and her daughter Joselyn were shopping at a Meijer Store on November 24, 2006. Susan was looking for greeting cards, which were on sale. When she entered the aisle where the cards were displayed, she observed a stack of broken-down cardboard boxes on the side of the aisle in front of the greeting-card display rack. The stack covered a large rectangular area and measured approximately five to six inches in height. Susan sought cards that were inaccessible due to the cardboard stack.

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[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Concerned about standing on the stack, Susan asked her daughter if she had stood on the stack, and she learned that Joselyn had, and without incident. However, still concerned about the stability of the stack, Susan "tested" the stack by placing one foot on top and then the other. She concluded that the stack felt "firm" and proceeded to stand on the stack for five to ten minutes while looking at the greeting cards. Because Susan did not look underneath the stack, she did not realize that a part of the stack rested on a wooden pallet.

When she was finished looking at the cards, Susan did not get down from the stack the same way that she had mounted it; rather, she turned to the south and took a step or two, and then sheets of cardboard began to slip out. She lost her balance and fell, injuring her left arm and shoulder.

After the fall, the Magnans filed a complaint alleging that Meijer's negligence in creating a hazardous condition of "cardboard sheets on top of a wooden pallet" had damaged both Susan (personal injury) and her husband (loss of consortium). Meijer moved for summary judgment on the ground that the condition was open and obvious, and, therefore, that Meijer owed no duty to warn Susan of it. The trial court granted summary judgment in favor of Meijer.

In their sole assignment of error, the Magnans argue that the hazardous condition was not open and obvious. Thus, they contend that the trial court erred by granting summary judgment to Meijer. We review the grant of summary judgment de novo, applying the standards set forth in Civ.R. 56.

A business owner owes an invitee the duty to maintain the premises in a reasonably safe condition and to warn of unreasonably dangerous latent conditions.[2] A latent condition is "hidden from view, concealed, and not discoverable by ordinary

[2] See *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St.3d 203, 480 N.E.2d 474.

inspection."[3] A store owner has no duty to warn business invitees of open and obvious dangers on the premises.[4] "The rationale is that an open and obvious danger is itself a warning and that the store owner 'may reasonably expect that persons entering the premises will discover those dangers and take appropriate measures to protect themselves.' "[5]

Susan argues that Meijer owed her a duty of care because it was not obvious that the stack of cardboard concealed a pallet, and because the dangerous condition blocked her access to the sale-priced greeting cards. We are unable to agree with her.

Although the pallet was concealed, it would have been obvious to a person in Susan's position that, by standing on the cardboard stack, she would not be standing directly upon the floor. Thus, a reasonably prudent person would have known that the cardboard stack could have been concealing something such as a pallet. Susan's own testimony supports our conclusion, as she clearly appreciated a hazard before standing on the cardboard stack. Thus, Meijer had no duty to warn her that the pallet was underneath.

Further, we find no support in the law for the Magnans' argument that the location of the dangerous condition under these facts created a duty, where the condition was otherwise open and obvious. Accordingly, we overrule the assignment of error, and we affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., SUNDERMANN and **CUNNINGHAM, JJ.**

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[3] *Potts v. David L. Smith Constr. Co., Inc.* (1970), 23 Ohio App.2d 144, 148, 261 N.E.2d 176.
[4] See *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, syllabus.
[5] See *McGuire v. Sears, Roebuck & Co.* (1996), 118 Ohio App.3d 494, 497, 693 N.E.2d 807, citing *Simmers v. Bentley Constr. Co.*, 64 Ohio St.3d 642, 1992-Ohio-42, 597 N.E.2d 504, and *Seltzer v. Abusway* (Jan. 11, 1995), 1st Dist. No. C-940062.

To the Clerk:

Enter upon the Journal of the Court on May 19, 2010

per order of the Court _____.

Presiding Judge